

HOUSE BILL 23

By Shepard

AN ACT to amend Tennessee Code Annotated, Title 50,
Chapter 2, and to enact the "Tennessee Minimum
Wage Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Tennessee Minimum Wage Act".

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 2, is amended by adding Sections 3 through 12 of this act as a new, appropriately designated part.

SECTION 3. As used in this part, unless the context otherwise requires:

(1) "Commissioner" means the commissioner of the Tennessee department of labor and workforce development;

(2) "Department" means the Tennessee department of labor and workforce development;

(3) "Employ" means to suffer or permit to work;

(4) "Employee" means an individual employed by an employer;

(5) "Employer" includes an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons, not involved in interstate commerce acting directly or indirectly in the interest of an employer in relation to an employee;

(6) "Tipped employees" has the same meaning as the term is defined by 29 U. S. C. §203(t) and as interpreted by 29 C.F.R. Part 531; and

(7) "Wages" means compensation paid to an employee in the form of legal tender of the United States or checks or drafts on banks negotiable into cash on demand or upon acceptance at full value; provided, wages may include the reasonable cost to

the employer, as determined by the commissioner, of furnishing meals or lodging to an employee, if such board or lodging is customarily furnished by the employer, and used by the employee. Wages shall not include tips or gratuities of any kind.

SECTION 4.

(a) Except for tipped employees in accordance with subsection (b), every employer shall pay to each employee wages at a rate not less than six dollars fifteen cents (\$6.15) per hour.

(b) Every employer shall pay a cash wage of at least three dollars thirteen cents (\$3.13) per hour to tipped employees, if they claim a tip credit against their minimum wage obligation. If an employee's tips combined with the employer's cash wage of at least three dollars thirteen cents (\$3.13) per hour do not equal the minimum hourly wage of six dollars and fifteen cents (\$6.15) in accordance with this act, the employer shall make up the difference. The employer who elects to use the tip credit provision must inform the employee in advance and must be able to show that the employee receives at least the minimum wage of six dollars and fifteen cents (\$6.15) when direct wages and the tip credit allowance are combined. In addition employees must retain all of their tips, except to the extent that they participate in a valid tip pooling or sharing arrangement.

SECTION 5. Every employer subject to the provisions of this act shall keep a summary of this act and any applicable wage orders and regulations posted in a conspicuous and accessible place in or about the premises of the employer's place of business.

SECTION 6. The provisions of this act shall be enforced by the department of labor and workforce development under the commissioner of labor and workforce development.

SECTION 7. The commissioner or an authorized representative of the commissioner shall have the authority to:

(1) Investigate and ascertain the wages of a person employed in any occupation in this state;

(2) Enter and inspect the place of business of an employer subject to the provisions of this act for the purpose of inspecting the payroll records of such employer;

(3) Require from an employer subject to this act a full and correct statement in writing with respect to wages, names and addresses of any of his employees;

(4) Administer rules and require by subpoena the attendance of witnesses, and the production of books, records and other evidence relative to any matter under investigation; and

(5) Carry out the provisions of this act.

SECTION 8. A violation of this act is a Class B misdemeanor punishable by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500). Further, any employer who willfully violates any provision of this act is subject to a civil penalty of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000) at the discretion of the commissioner or the commissioner's designated representative. Each and every infraction constitutes a separate and distinct violation. If the commissioner, or the commissioner's designated representative, determines that the violation was unintentional, there shall be a warning, in lieu of a penalty, on the first violation. On second or subsequent violations, the civil penalty is applicable and may be assessed at the discretion of the commissioner, or the commissioner's designated representative. It shall be at the sole discretion of the commissioner to elect to proceed either civilly or criminally upon any violation of this part; however, the employer shall not be charged both civilly and criminally for the same violation.

SECTION 9. Any employer who violates the minimum wage requirements of this act shall be liable to the employee or employees affected for the amount of unpaid minimum wages. Upon a judgment being rendered in favor of any employee or employees, in any action brought in any court of competent jurisdiction to recover unpaid wages under this act, such judgment

shall include, in addition to the unpaid wages adjudged to be due, an additional amount equal to such wages as damages. The court shall, in addition to any judgment awarded to the employees, require the defendant to pay court costs and reasonable attorney's fees incurred by the employee or employees. However, action to recover must be instituted within three (3) years from the date such wages should have been paid.

SECTION 10. In the administration of this act, the commissioner shall cooperate, to the fullest extent consistent with this act, with the administrator of the wage and hour division of the United States department of labor.

SECTION 11. Nothing in this act shall be deemed to interfere with, impede or in any way diminish the right of employees to bargain collectively through representatives of their own choosing in order to establish wages in excess of the applicable minimum under this act.

SECTION 12. Within existing resources of the department of labor and workforce development, the commissioner of labor and workforce development shall promulgate rules and regulations to effectuate the purposes of this act that are not inconsistent with the provisions of the federal Fair Labor Standards Act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 13. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 14. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect July 1, 2007, the public welfare requiring it.